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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,524	11/27/2000	Leonard G. Presta	GENENT.33CP2C2	6863
25213	7590	05/03/2004	EXAMINER	
HELLER EHRMAN WHITE & MCAULIFFE LLP 275 MIDDLEFIELD ROAD MENLO PARK, CA 94025-3506			DAVIS, MINH TAM B	
			ART UNIT	PAPER NUMBER
			1642	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20040415

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Commissioner for Patents

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DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Applicant's submission filed on 10/31/03 has **not** been entered for the following reasons:

- 1) The RCE request does not comply with CFR§ 1.114, because the last Office action was a non-final rejection.

CFR§ 1.114 teaches as follows: Applicant could file a request for continued examination under the following conditions:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

- (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
- (2) Abandonment of the application; or
- (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

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In the instant application, the request for continued examination was filed when the prosecution is not closed, i.e. the last Office action of 10/23/02 is a non-final rejection.

2. In the reply of 10/31/03, Applicant recites that claims 6-12 are pending, but does not cancel the previously added new claims, 20-26, which were not entered by the Examiner. Thus it is not clear which claims are pending.

Further, the reply does not meet the requirement of 37 CFR1.111, because it does not distinctly and specifically point out the supposed errors in the examiner's action and does not reply to every ground of objection and rejection in the prior Office action..

37 CFR1.111 teaches as follows:

In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to

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advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

For the reasons set forth above, the request for RCE is improper and is not entered.

Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

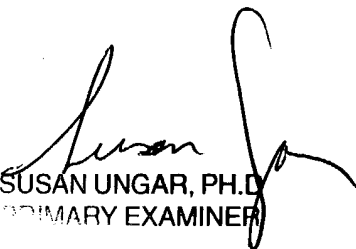
Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH-TAM DAVIS whose telephone number is 571-272-0830. The examiner can normally be reached on 9:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, YVONNE EYLER can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MINH TAM DAVIS
April 16, 2004


SUSAN UNGAR, PH.D.
PRIMARY EXAMINER